

Recent history is a testament that the Middle East (ME) Region, a major world supplier of petroleum products, is politically unstable. Any regional upheaval triggers skyrocketing oil world prices. Examples of these upheavals were the Yom Kippur war between the Arab countries and Israel; the Iraq invasion of Kuwait; the Iran-Iraq war; and recently the civil unrest in the region, particularly in Libya.



Effect of Oil Crisis in the Country

Recently, the worsening peace and order situation in the Middle East, the so called *Arab awakening* is big factor making the situation worse. In order to have an idea of its impact in the Philippines, a news item stated that the *price increases of petroleum products occurred twelve times since January of 2011*¹. Furthermore, the same news item stated that the price of diesel increased from P46.45 to P49 per liter, and the price of gasoline likewise increased from P53.60 to 60.81 per liter.

In another news item², where the focus is on the incremental price increases of oil product it reported that the incremental increases (as of April 12, 2011) are as follows: (a) diesel – P1.50 per liter, (b) gasoline – P1.50 per liter, (c) regular gas – P1.24 per liter and (d) kerosene – P1.40 per liter. Since January 2011, the total price increases are as follows: (a) diesel – P8 per liter and (b) gasoline – P6 per liter. The oil companies involved are Pilipinas Shell, Chevron Philippines, Petron Corporation, PTT, City Oil Philippines and TOTAL.

What does the future hold? In another news item³ states the following situations were speculated:

1. *Consumers will have to deal with **weakly fuel price increases of P1.50 a liter...***
2. *Allowing the oil firms to recoup their losses could drive the prices to a record of **P65 a liter...***
3. *An industry executive said **fuel prices could go up by between P8 to P11 a liter to reflect the higher oil prices...** and*
4. *Under recoveries (the amount that oil firms need to recoup) have soared...There is no relief in sight. **Consumers will have to bear weekly increases, most likely by P1.50 a liter.***

The Philippines reacted to these negative stimuli, and is still reacting. From the administration of then President Ferdinand Marcos in the 70's continuing to the present administration of President Noynoy Aquino, the country instituted measures to mitigate the negative effects of the rapid increases in oil imports. Among these measures are:

- a. the institution of the Oil Price Stabilization Fund (OPSF);
- b. the attempt to operate a nuclear power plant (Bataan Nuclear Power Plant), its subsequent mothballing, and the attempts to revive the project;
- c. the grant of fiscal incentives to the domestic oil industries;
- d. the attempt to eradicate cartels and monopolies in the industry;
- e. decreasing/eliminating the payment of the VAT and tariffs on imports;
- f. promoting the manufacture and use of "biofuels" from agricultural products, particularly sugar;
- g. the exploitation of the coal and geothermal energy, to lessen the country's dependence on imported petroleum products;
- h. the promotion of ventures relating to renewable sources of energy; and
- i. the grant of emergency power to the President of the Philippines.

¹ Remo Amy, Montecillo Paolo, Oil prices up again 12th time this year, Philippine Daily Inquirer, April 13, 2011, http://services.inquirer.net/print/print.php?article_id=20110413-330842, 4:45 pm, Sunday, April 17, 2011.

² Oil firms announce big fuel price hike, ABS-CBN News, Tuesday, April 12, 2011.

³ Ho Abigail, Domingo Rommel <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20080603-140361/P65liter-gasoline-price-looms> (date of posting June 3, 2008)

In spite of these measures, the prices of petroleum products continue to increase.

There are suggestions from different sectors aiming to alleviate the effects of increasing prices of imported petroleum products. Let us have a second look on some of the laws and proposals.

Oil Price Stabilization Fund (OPSF) history

One of the earliest attempts to stabilize the domestic price of oil products is the establishment of the OPSF. Its history began on October 15, 1984 when President Marcos issued PD 1956, imposing an ad valorem tax on certain manufactured oils and other fuels; bunker fuel oil and diesel fuel oil; as well as revising the specific taxes thereon. The same law, PD 1956, also created a special fund, called the **Oil Price Stabilization Fund (OPSF)** for the purpose of minimizing frequent price changes brought about by two factors; the increasing exchange rate of the peso as against the US dollar, and the increase of the world market prices of imported products.

A good feature of PD 1956 is that it was "revenue neutral", identifying the following sources of the fund:

- a) Any increase in the tax collection from ad valorem tax or customs duty imposed on petroleum products subject to tax under this Decree (PD 1956) arising from exchange rate adjustment, as may be determined by the Minister of Finance in consultation with the Board of Energy;
- b) Any increase in the tax collection as a result of the lifting of tax exemptions of government corporations under PD 1931, as may be determined by the Minister of Finance in consultation with the Board of Energy;
- c) Any additional tax to be imposed on petroleum products to augment the resources of the OPSF through an appropriate Order that may be issued by the Board of Energy requiring payment by persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products.

The OPSF shall be used to reimburse the oil companies for cost increases on crude oil and imported petroleum products resulting from exchange rate adjustment and/or increase in world market prices of crude oil.

PD 1956 provided for the rate of tax on the following petroleum products:



- a) On denatured alcohol to be used for motive power, per liter of volume capacity, **P0.01**; Provided, That unless otherwise provided for by special laws, if the denatured alcohol is mixed with gasoline, the specific tax on which has already paid, only the alcohol content shall be subject to the tax herein prescribed. For the purposes of this subsection, the removal of denatured alcohol of not less than 180 degrees proof (90 % absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary;
- b) Processed gas, per liter of volume capacity, **P0.05**;
- c) Thinners and solvents, per liter of volume capacity, **P1.20**;
- d) Liquefied petroleum gas, per kilogram, **P0.625**; Provided, That petroleum gas used for motive power shall be taxed at a rate equivalent to the specific and ad valorem tax on diesel fuel oil;
- e) Greases, waxes and petrolatum, per kilogram, **P4.50**;
- f) Aviation turbo jet fuel, per liter volume capacity, **P1.20**; and
 1. Fuel oil Kerosene, 14%,
 2. Naptha, regular gasoline and all similar products of distillation, 25%,
 3. Premium and aviation gasoline, 25%,
 4. Thinners and solvents, 25%,
 5. Liquefied petroleum gas, 14%,
 6. Asphalt, 14%,
 7. Aviation turbo jet fuel, 25%,
 8. Fuel oil, commercially known as bunker fuel oil, and on similar fuel oils, having more or less the same generating power, 7%,
 9. Fuel oil, commercially known as diesel fuel oil, and on similar fuel oils, having more or less the same generating capacity, 22%.

The ad valorem tax shall have the following characteristics: (a) it shall be based on the wholesale posted price net of specific and domestic ad valorem taxes of the oil product concerned, as approved by the Board of Energy; (b) it shall be paid by the manufacturer, producer, owner, person having possession of importer; and (c) the proceeds from the ad valorem tax shall accrue to the General Fund.

On the refined and manufactured mineral oils and motor fuels, the following specific tax is imposed:

- g) *Lubricating oil, per liter of volume capacity, **P4.50**;*
- h) *Naphtha, regular gasoline and all other similar products of distillation, per liter of volume, capacity, **P1.29**; Provided, That on premium and aviation gasoline, the tax shall be **P1.18** and **P0.005** (one half centavos) per liter of volume capacity;*
- i) *Fuel oil, commercially known as bunker fuel oil, and on all similar fuel oils, having more or less the same generating power, **P0.25** per liter of volume capacity.*

OPSF under President Corazon C. Aquino

On January 24, 1986, President Corazon Aquino issued Executive Order No. 137 implementing the creation of the Oil Price Stabilization Fund (OPSF) by virtue of Section 8 of Presidential Decree No. 1956 (issued by President Ferdinand Marcos).

The sources of the OPSF are the following:

- a) *Any **increase in the tax collection from ad valorem tax or customs duty imposed on petroleum products** subject to tax under this Decree arising from exchange rate adjustment, as may be determined by the Ministry of Finance in consultation with the Board of Energy;*
- b) *Any **increase in the tax collection as a result of the lifting of tax exemptions of government corporations**, as may be determined by the Minister of Finance in consultation with the Board of Energy;*
- c) *Any **additional amount to be imposed on petroleum products** to augment the resources of the Fund through appropriate Order that may be issued by the Board of Energy requiring payment by persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products: and*

- d) *Any resulting **peso cost differentials in case the actual peso costs paid by oil companies in the importation of crude oil and petroleum products is less than the peso costs computed using the reference foreign exchange rate as fixed by the Board of Energy.***

It is interesting to note that after the EDSA revolution of 1986, the administration of President Corazon Aquino increased taxes on petroleum products. As a comparison to the current administration of President Benigno "P-Noy" Aquino policy declaration that there shall be no new taxes, particularly in petroleum products.

Under President Corazon Aquino, the OPSF shall be used for the following:

- a) *To reimburse the oil companies for cost increases in crude oil and imported petroleum products resulting from **exchange rate adjustment and/or increase in world market prices of crude oil**;*
- b) *To reimburse the oil companies for possible cost underrecovery incurred as a result of the **reduction of domestic prices of petroleum products**. The magnitude of the underrecovery, if any, shall be determined by the Ministry of Finance. "Cost recovery" shall include the following:*
 - *Reduction in oil company take as directed by the Board of Energy without the corresponding reduction in the landed cost of oil inventories in the possession of the oil companies at the time of the price change;*
 - *Reduction in internal ad valorem taxes as a result of foregoing government mandated price reductions; and*
 - *Other factors as may be determined by the Ministry of Finance in cost recovery.*

OPSF under President Ramos

President Fidel V. Ramos on December 9, 1992 signed into law RA 7639 providing that the subscription of the Government of the Republic of the Philippines to the capital stock of the National Power Corporation, shall be paid in part out of the Oil Price Stabilization Fund (OPSF) in the amount of three billion pesos (P3,000,000,000).

A Trust Account in the books of accounts of the Office of Energy Affairs was designated as the Oil Price Stabilization Fund (OPSF) for the purpose of minimizing frequent price changes brought about by the exchange rate adjustments and/or

changes in world market prices of crude oil and imported petroleum products. The OPSF may be **sourced** from any of the following:

- a) *Any increase in the tax collection as a result of the lifting of tax exemptions of government corporations, as may be determined by the Department of Finance in consultation with the Energy regulatory Board;*
- b) *Any additional amount to be imposed on petroleum products to augment the resources of the Fund through an appropriate order that may be issued by the Energy Regulatory Board requiring payment of persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products;*
- c) *Any resulting peso cost differentials in case the actual peso costs paid by the oil companies in the importation of crude oil and petroleum products is less than the peso costs computed using the reference foreign exchange rate as fixed by the Energy Regulatory Board.*

An important provision of RA 7639 is the following use of the OPSF:

- a) *To reimburse the oil companies for cost increases in crude oil and imported petroleum products resulting from exchange rate adjustment and/or from the increase in world market prices of crude oil;*
- b) *To reimburse the oil companies for possible cost underrecovery incurred as a result of the reduction of domestic prices of petroleum products. The magnitude of the underrecovery, if any, shall be determined by the Department of Finance. Cost underrecovery shall include the following:*
 - Reduction in oil company take ads directed by the Energy Regulatory Board without the corresponding reduction in the landed cost of oil inventories in the possession of the oil companies at the time of the price change;
 - Reduction in internal specific taxes as a result of the foregoing government-mandated price reductions; and

- c) *To cover the payment in part of the subscription of the Government of the Republic of the Philippines to the capital stock of the National Power Corporation in the amount of three billion pesos..*

The Downstream Oil Industry Deregulation Act of 1996

On March 28, 1996, President Fidel Ramos signed into law RA 8180, the Downstream Oil Industry Deregulation Act of 1996. The objective of the law is "...to deregulate the downstream oil industry to foster a truly **competitive market** which can better achieve the social policy objectives of fair prices and adequate, continuous supply of environmentally clean and high-quality petroleum products." RA 8180 defines "downstream oil industry" as the business of importing, re-exporting, shipping, transporting, processing, refining, storing, distribution, marketing and/or selling crude oil, gasoline, diesel, liquefied petroleum gas (LPG), kerosene, and other petroleum and crude oil products.

The pertinent provisions of the law are as follows:

- a) Import liberalization - Any person or entity may import or purchase any quantity of crude oil or petroleum products from a foreign or domestic source, lease, own and operate refineries and other downstream oil facilities and market such crude oil or petroleum products⁴;
- b) Reportorial requirement - Persons or entities engaging in the activities covered by the liberalization of downstream oil industry must comply with the following requirements:
 - 1) notice must be given to the DOE for monitoring purposes,
 - 2) even if such notice is already complied with, such persons/entities may also be required to submit security of quality, health and safety and environmental clearance from the proper government agencies,
 - 3) every report shall be made for every importation/exportation, and
 - 4) all importations shall be in accordance with the Basel Convention. The Basel Convention refers to the international accord which governs the trade or movement of hazardous and toxic waste across borders.

⁴ Section 5(a), RA 8180.

- c) Preferential tariff - Upon the effectivity of the RA 8180, **a tariff rate of three percent (3%) shall be imposed on imported crude oil, and seven percent (7%) on refined petroleum products**, except fuel oil and LPG which shall be the same as that for imported crude oil. By January 1, 2004, the tariff rate on imported crude oil and refined petroleum products shall be the same;
- d) National Power Corporation (NPC) - For as long as the National Power Corporation (NPC) enjoys exemptions from taxes and duties on petroleum products used for power generation, the exemption shall apply to **purchases through the local refineries and to the importation of fuel oil and diesel**;
- e) Security of supply – The DOE shall require the refiners and importers to maintain a minimum inventory equivalent to ten percent (10%) of their respective annual sales volume or forty (40) days of supply whichever is lower: and
- f) Promotion of Fair Trade Practices – The DTI and the DOE shall take measures to promote fair trade and to prevent **cartelization** and **monopolies** and combinations in restraint of trade and any unfair competition in downstream oil industry.
- 3) *Any person who, being a manufacturer, producer, or processor or any merchandise or object of commerce or an importer of any merchandise or object of commerce from any foreign country, either as principal or agent, wholesaler or retailer, shall combine, conspire or agree in any manner with any person likewise engaged in the manufacture, production, processing, assembling or importation of such merchandise or object to commerce or with any other persons not so similarly engaged for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippines, or any such merchandise or object of commerce manufactured, produced, processed, assembled in or imported into the Philippines, or of any article in the manufacture of which such manufactured, produced, processed, or imported merchandise or object of commerce is used..*
- *Articles 188 and 189 of the Revised Penal Code (as repealed by Section 239, RA 8293, the Intellectual Property Code of the Philippines, approved on June 6, 1997, and took effect on January 1, 1998)*

Unfair Trade Practices

Unfair trade practices like formation of cartels, monopolies, and unfair competition are activities prohibited under the Revised Penal Code, thus:

- **Article 186 - Monopolies and combinations in restraint of trade** - The following activities are prohibited:
 - 1) *Any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce to prevent by artificial means free competition in the market;*
 - 2) *Any person who shall monopolize any merchandise or object of trade or commerce, or shall combine with any other person or persons to monopolize said merchandise or object in order to alter the price thereof by spreading false rumors or making use of any article to restrain free competition in the market;*

Section 168. Unfair Competition, Rights, Regulation and Remedies.-

168.1 A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a **property right in the goodwill** of the said goods, business or services so identified, which will be protected in the same manner as the other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or those who shall commit any acts calculated to produce said result, **shall be guilty of unfair competition**, and shall be subject to an action therefor.

168.3. In particular, and without limiting the scope of protection against unfair competition, the following shall be deemed guilty of **unfair competition**:



- a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with the like purpose:
 - b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the service of another who has identified such services in the mind of the public; or
 - c) Any person who shall make any false statement in the course of trade or shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.
- **False Designations of Origin; False description or Representation (Section 169, RA 8293)**

Section 169.1 – Any person who, or in connection with any goods or services, or any container of goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

- 1) Is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or
- 2) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin as his or her another person's goods, services, or commercial activities, shall be liable to a civil action for damages and injunction ..

Deregulation of the downstream oil industry and abolition of the OPSF (1998)

On February 18, 1998, RA 8479 (President Fidel Ramos) was enacted into law in order to “..liberalize and deregulate the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply of environmentally-clean and high quality petroleum products. To this end, the State shall promote and encourage the **entry of new participants in the downstream oil industry**, and introduce adequate measures to ensure the attainment of there goals.”

RA 8479 provides for a **single and uniform tariff on both imported crude oil and refined petroleum products at a rate of three percent (3%) ad valorem**. Beginning January 1, 2004, upon the implementation of the Uniform Tariff Program under the World Trade Organization and the ASEAN Free Trade commitments, the tariff rate shall be automatically adjusted to the appropriate level notwithstanding the particular provision of RA 8479.

The highlight of the law is the program to encourage the entry of new participants in the oil industry in the country. In this regard, the following fiscal incentives are given to the new players:

- 1) Income tax holiday,
- 2) Additional deduction for labor expenses,
- 3) Maximum tax and duty of three percent (3%) and Value Added Tax (VAT) on imported capital equipment,
- 4) Tax credit on domestic capital equipment,
- 5) Exemption from contractor's tax,
- 6) Unrestricted use of consigned equipment,

- 7) Exemption from the real property tax on production equipment or machineries,
- 8) Exemption from taxes and duties on imported spare parts,
- 9) Such other applicable incentives under Article 39 of Executive Order No. 39 (The Omnibus Investments Code of 1987).

The incentives may be availed by persons with new investments for a period of five (5) years from the registration with the Board of Investments (BOI). In the storage, marketing and distribution of petroleum products, only the investments of new industry participants shall be entitled to incentives. *"Marketing of petroleum products"* shall include the establishment of gasoline stations. **To perpetuate the grant of incentives, the industry shall be included in the annual Investment Priorities Plan (IPP) of the BOI.**

In the light of the current increases of imported petroleum products, some sectors propose the re-establishment of the OPSF. Is the suggestion viable?

Attempts to re-establish the OPSF

President Benigno "P-Noy" Aquino is against the re-establishment of the OPSF because it requires huge amount of government⁵ funds to operate, approximately US\$ 2 billion.

The Senate Tax Study and Research Office (STSR) has requested the National Tax Research Center (NTRC) to comment on the OPSF revival. The NTRC report⁵, concurs with the President's position *i.e.* against the OPSF's re-establishment. The point of view of the NTRC is as follows:

- 1) With the recent tension in the Middle East and other oil exporting countries such as Libya, the price of crude oil is expected to rise to a new record high. In this regard, various transport and consumer groups are seeking programs that will reduce the effects of oil price increases. It is worth to note that as anticipated, oil prices breached to \$110 per barrel, the highest since September 2008⁶. In effect, the year-to-date total average price adjustment for gasoline is P4.50 per liter while diesel is P5⁷. (The date of the report is March 11, 2011)

- 2) The Philippines being dependent on imported oil will surely feel the impact of the abrupt increase in oil prices. Thus, the idea of re-instituting the defunct OPSF surfaced. It is noted that the OPSF was created to reimburse the oil companies for the cost increases on crude oil and imported petroleum products resulting from the exchange rate adjustment and/or increase in world market price of crude oil. Hence, prices of petroleum products became for a longer period of time despite the increases or decreases in crude prices in the world market and the changes in the foreign exchange rates.

- 3) In addition, the OPSF helped to preserve the viability of the oil industry and its capability to supply the energy and related needs of the public⁸. However, the price stability of oil process comes with a cost to the government and other stakeholders. **During the era of the OPSF, the prices of petroleum products did not reflect its prevailing market prices.** Thus, the OPSF served as buffer fund that paid for the difference when the prevailing market price was higher than the base price while it was replenished when the market price was lower than the base price.

- 4) In effect, the OPSF cushioned the impact of the volatile prices of petroleum products. Thus, it spared the consumers from sudden changes in the prices of oil products. However, the OPSF is not a free item because it entailed a huge amount of money to establish it and doing so again can hurt the government finances and its capacity to spend on its various projects. It is worth to point out that the Congressional and Planning and Budget Department of the House of Representatives stressed that the National Government subsidy to the OPSF had ballooned to P8.3 billion in 1998 alone and was a **major contributor to government deficit and indebtedness.**

- 5) In addition, former Finance Secretary Dr. Jesus Estanislao explained that "to revert the downstream oil industry into a regulated set-up is a dangerous step to bringing back the nightmares of 'subsidy scheme' that had practically fleeced the Filipino taxpayers⁹." He pointed out the "regulations only sound good but are terrible in natural practice because government is subjected to a lot of political pressures that

⁵ Letter-response to the STSR inquiry of the NTRC, among the topics requested by the STSR is the Possibility of Reviving the Oil Price Stabilization Fund (OPSF), March 14, 2011, Dante Sy, NTRC Executive Director.

⁶ Agence France-Presse 2011, Oil Prices to \$110., in ABS-CBNnews.co. Available at <http://www.abs-cbnnews.com/business/02/23/11/oil-prices-top-110>, viewed on March 9, 2011.

⁷ David, E N J 2011, Pump Prices Up Anew Over Fears of Civil Unrest In Business World online, available at <http://www.bworldonline.com/content.php?title=Pump%20prices%20up%20anew%20over%20fears%20of%20civil%20unrest&id=27652>, viewed on March 9, 2011.

⁸ Gomez, C B 1990, Oil Price Stabilization Fund (OPSF) and Deregulation, Central Bank Review, November 1990.

⁹ Velasco0, M M 2009, Groups Warn Against Return To Subsidy-Laden Oil Regulation. Manila Bulletin. Available at <http://www.mb.com.ph/node/219500/group>, viewed on March 7, 2010.

OPEC YEARLY BASKET PRICE

YEAR	US\$ to Php End of Period	Prices in US\$	Growth Rate Of Prices
2011	43.38	98.00	26.53%
2010	43.88	77.45	26.84%
2009	46.35	61.06	-35.35%
2008	47.48	94.45	36.73%
2007	41.40	69.08	13.10 %
2006	49.13	61.08	20.62%
2005	53.06	50.64	40.47%
2004	56.26	36.05	28.29%
2003	55.56	28.10	15.35%
2002	53.09	24.36	5.36%
2001	51.40	23.12	-16.23%
2000	29.99	27.60	57.89%
1999	40.31	17.48	42.35%
1998	39.05	12.28	-

when prices are suppressed, the government will end up subsidizing and subsidizing and subsidizing, so the situation become a big problem of subsidy which put risk on our consolidated public sector deficit¹⁰."

- 6) It is in this regard that the downstream oil deregulation law was passed by Congress to allow market forces to set the real prices and to encourage competition which aims to lower the prices of petroleum products. However, more than a decade after deregulation, oil prices continue to rise. The reason for the increasing oil prices is not that the deregulation law is not working but **because of the other factors that directly affect oil prices in the world market and the peso devaluation.**
- 7) The basket price of the Organization of the Petroleum Exporting Countries (OPEC) at present is the highest since 1998 at US\$ 98 per barrel while the highest exchange rate of US\$ 1 to Philippine peso was in 2004 at Php 56.26. Notice that the present peso exchange rates only depreciated by 11% to US dollar as compared to 1998 while the prices of petroleum products grew by 398%. Thus the
- 8) Moreover, the Philippines should learn lessons from other countries' experiences which show that price minimization policies are likely to harm consumers and overall economy by encouraging inefficient use of fuel, smuggling and hoarding, increasing public debt and squeezing other government spending. In the long run, these **price distortions** prolong the global supply-demand imbalance and keep oil prices higher for a longer period of time¹¹.
- 9) In Indonesia for example, the government admitted in its policy on fuel subsidy cuts and other accompanying policies that indiscriminate fuel subsidies¹² have been a poor way to target welfare transfers with the wealthiest 40% of households capturing 70% of the subsidies. While in India, the possibility that large share of the subsidized product is

¹⁰ Velasco, M M 2009, Groups Warn Against Return To Subsidy-Laden Oil Regulation, Manila Bulletin, Available at <http://www.mb.com.ph/node/219500/group>, viewed on March 7, 2010.

¹¹ Sy, V 2008 Be Careful With Fuel Subsidies in Philequity Corner, The Philippine Star, June 23, 2008.

¹² International Institute for Sustainable Development, Lessons Learned from Indonesia's Attempts to Reform Fossil-Fuel Subsidies, page 15.

diverted to the black market or used for blending with higher value products was seen. Thus, society loses in two ways. First, some of the subsidies do not reach the intended beneficiaries. Second, the misused subsidy feeds the black economy that provides money to be used to influence bureaucrats and the political system.¹³

- 10) Moreover, Brazil¹⁴ and India's experiences show that once the subsidy was established, it is very difficult to reduce or eliminate it and that government intervention in the energy sector can be very expensive in the long term and untenable in times of high international oil price or low domestic supply, thus creating and impediment to sustained growth. Thus, the subsidy prevents a country from reaping the efficiency gains from the liberalization of the energy market and keeping the latter internationally competitive.
- 11) It is also worth mentioning that in Iran, the energy subsidy caused a myriad of problems: it leads to excessive and inefficient energy use, boosts fuel imports, discharges much-needed investment in the energy sector, incentivizes fuel smuggling and increases pollution. Also, in Russia, subsidies have bred in efficiency throughout the Russian economy which ranks as one of the least efficient in the world in terms of GDP per unit of energy consumed. Furthermore, artificially low prices have resulted to revenue losses leading to low availability of capital for investment and reducing the confidence of investors in the viability of new investment.¹⁵
- 12) Likewise subsidies encourage wasteful consumption as the reduction of consumer prices below the full costs of supply leads to excessive use which is detrimental to energy security and to the fight against climate change. Thus, the re-establishment of the OPSF will only contradict government's commitment to the Kyoto Protocol which means that the country is committed to the mitigation of the effects of climate change.
- 13) However, the government should adopt policies and programs that will minimize the impact of rising oil prices that produce a rippling effect on the prices of other basic commodities. Government policies and programs should, however be **direct** to ease the suffering of the people.

14) Take Iran for example, to compensate for higher prices of petroleum products and electricity brought about by the subsidy reform law, and its impact on the low income groups, 50% of the fiscal benefits resulting from the increased prices were to be redistributed to low income consumers via direct cash and non-cash payments. Another 30% would be allocated for raising energy efficiency in the key sectors of the economy and improving public transportation. The remaining 20% would be used to offset government expenses associated with higher energy costs or as an additional safety nets.¹⁶

15) **In this connection, instead of re-establishing the OPSF, government should consider other programs like giving a one time subsidy on electricity for consumers utilizing less than 100 kwh, expansion of conditional cash transfers to poor Filipino families and other programs that can be directly felt by the people.**

16) In this regard, the government may be able to alleviate the suffering of the people without distorting the deregulation of the downstream oil industry. In addition, the government will be spared from incurring further deficits that may arise from the re-establishment of the OPSF. **Also, the government should initiate and sustain programs that encourage energy conservation and use of renewable energy.** In this regard, the impact of rising oil prices will be cushioned and the country's reliance on imported fuel will be reduced.

The proposal to re-establishment of the OPSF deserves a "thumbs down." If the re-establishment of the OPSF is not viable, how about the idea of re-activating the Bataan Nuclear Power Plant (BNPP)?

Reactivation of the Bataan Nuclear Power Plant (BNPP)

The history of the Bataan Nuclear Power Plant (BNPP) is like taking a walk in the memory lane of Philippine politics. It is of epic proportions involving several decades of controversy from President Marcos to the current administration of President Benigno Aquino. Nuclear disasters, or near disasters, from the Three Mile Island Nuclear Plant in Philadelphia, USA in 1970; the Chernobyl Nuclear Power Plant in Ukraine in 1986; the eruption of the

¹³ International Institute for Sustainable Development, Lessons Learned from Attempts to reform India's Kerosene Subsidy, page 14.

¹⁴ International Institute for Sustainable Development, Lessons Learned from Brazil's Experience with Fossil Fuel Subsidies and their Reform, page 12.

¹⁵ International Energy Agency, World Energy Outlook 2010, page 599.

¹⁶ International Energy Agency, World Energy Outlook 2010, pages 595-596.

nearby Mt Pinatubo volcano in 1991; and the recent near nuclear meltdown in Fukushima, Japan on March 18, 2011, all bolstered the opposition of cause oriented groups to reactivate the BNPP.

The use of nuclear energy started as early as 1958 when RA 2067 was enacted creating the Philippine Energy Atomic Commission (PEAC). The aim of the law was to undertake research and development activities in peaceful uses of nuclear energy, laying the foundation towards the ultimate establishment of the BNPP. Two decades later, in July 1973, President Ferdinand Marcos actually started building the BNPP.

Reasons for BNPP

What was the situation in 1973 prompting President Marcos to decide to construct the BNPP?

During that time, in 1973 the members of the Organization of Arab Petroleum Exporting Countries (OAPEC) proclaimed an oil embargo in response to the US decision to re-supply the Israeli army, during the Yom Kippur war. Such action of the United States ushered in an oil embargo resulting in high petroleum prices, disruption of supply and worldwide economic recession.

Because every country was affected, a strong rift was created within the North Atlantic Treaty Organization (NATO). By January 18, 1974, US Secretary of State Henry Kissinger negotiated for an Israeli troop withdrawal from the parts of the Sinai. The promise of a negotiated settlement between Israel and Syria was sufficient to convince the Arab oil producers to lift the embargo in March 1974, resulting in both the end of the Yom Kippur war and the oil embargo.

The 1973 oil crisis put a heavy strain on the Philippine economy which was enough for President Marcos to start building the BNPP in 1976. His rationale was that a nuclear power plant would be the **long term solution** to the country's increasing demand for oil products as well as lessening the country's dependence on imported oil.

Unfortunately, while the BNPP was being constructed, the 1979 *Three Mile Island* accident occurred resulting to the stoppage in the construction of the plant. Among the reasons for the stoppage were as follows:

- a. the location of the BNPP, Morong, Bataan, was ominously near the then dormant Mt. Panatubo;

- b. the Philippines was along the "ring of fire" frequented by earthquakes,
- c. Morong was situated in a relatively densely populated area: and
- d. Morong was near Manila.

As a result of these legitimate concerns, President Marcos constituted a technical team to evaluate the safety of the plant. The technical team found 4,000 defects in the construction.

In spite of the negative findings regarding safety, the construction of the BNPP continued until it was completed in 1984, costing the Philippine government US \$2.3 billion. The BNPP was a light water reactor built by Westinghouse and supposed to produce 621 megawatts of electricity.

The main architect and champion of the BNPP, President Marcos was overthrown by the People Power Revolution in 1986. Almost simultaneously with the assumption of the President Corazon Aquino in 1986, the Chernobyl Nuclear Power Plant in Ukraine had a meltdown resulting in a nuclear fall out in several countries in Western Europe. The Chernobyl meltdown reinforced the issue against BNPP's safety standards.

The mothballing of BNPP

As expected, President Corazon Aquino decided to mothball the plant for good. Was it the end of the story? Unfortunately no. The Aquino administration sued Westinghouse, the builder of the BNPP for overpricing and bribery which was ultimately rejected by a United States court.

Debt repayment on the BNPP became the country's biggest single obligation. Successive administrations looked at several proposals to convert the plant into an oil, coal, or, or gas fired power station, but all have been less economically attractive in the long term than the construction of a new power station.

In spite of its being mothballed, the BNPP remained intact, including its nuclear reactor, and has been maintained up to the present. The Philippine government completed paying off its obligations in April 2007, more than 30 years after the construction of the plant began.

According to experts, nuclear power plants have a useful life of around forty years, after that, the technology is considered as obsolete. In other words, the BNPP, now being more than 40 years old is definitely obsolete.

Attempt to revive the BNPP

On January 29, 2008, the late Energy Secretary Angelo Reyes announced that the International Atomic Energy Agency (IAEA) 8-man team led by Akira Omoto inspected the decommissioned BNPP on rehabilitation prospects. In preparing the report, the IAEA made two primary recommendations. First, the power plant's status must be thoroughly evaluated by technical inspections and economic evaluations conducted by a committed group of nuclear power experts with experience in preservation management.

Secondly, the IAEA mission advised the Philippine government on the general requirements for starting its nuclear power program, stressing that the proper infrastructure, safety standards, and knowledge be implemented. The IAEA's role did not extend to assessing whether the power plant is usable or not, or how much the plant may cost to rehabilitate.

With the rising prices of imported petroleum products, perhaps the time has come to take a second look at the BNPP, not necessarily as nuclear plant but as a plant using other sources of energy.

The unexpected 9.0 earthquake intensity (using the Richter scale) causing the near meltdown of the nuclear plants in Japan once more emboldened cause oriented groups against any nuclear power plants in the Philippines.

At the rate things are going, the BNPP would take its place as a mere footnote in Philippine history.

As a postscript, the Philippine Constitution allows the construction of nuclear power plant for peaceful purposes. It only disallows nuclear weapons in the Philippine territory. Quoting the Constitution:

*"The Philippines, consistent with the national interest, adopts and pursues a policy of **freedom from nuclear weapons in its territory.**"*¹⁷

Renewable sources of energy

The trend is to develop renewable energy (RE) sources, primarily to decrease carbon emissions to delay global climate heating, at the same time lessen our dependence on imported petroleum products. For these reasons, the government fully endorses RE projects.

On December 16, 2008, President Gloria Arroyo signed into law RA 9513, otherwise known as the Renewable Energy Act of 2008. RA 9513 provides for the mechanism to harness green fuel, hoping to attract potential investments amounting US\$ 80 billion for the next ten (10) years. The Philippine government hopes to realize savings amounting to P 60 billion (US\$ 1.2 billion).

As a consequence of RA 9513, the Department of Energy drafted the renewable energy policy framework wherein the Philippines will develop more than 4,000 MW of additional renewable energy capacity, some 1,200 MW coming from geothermal sources. The Philippines is the world's second largest geothermal power producer (second only to the United States). It also has the highest wind potential power in the world, high solar power penetration, abundant hydropower and biomass resources.

Features of RA 9513

In order to attract investors, RA 9513 grants of fiscal and non-fiscal incentives to those interested in RE projects. These incentives are:

"Section 15. Incentives for Renewable Energy Projects and Activities. – RE (renewable energy) developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE (Department of Energy), in consultation with the BOI (Board of Investments), shall be entitled to the following incentives:

Income Tax Holiday (ITH) – *For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the national government.*

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: Provided, That the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: Provided, further, That the entitlement period for additional investments shall not be more that three (3) times the period of the initial availment of the ITH.

Duty-free Importation of RE Machinery, Equipment and Materials – *Within the first ten (10) years upon the issuance of a certification of an RE developer, the*

¹⁷ Section 8, Article II, Declaration of Principles and State Policies, the Constitution of the Republic of the Philippines.

importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: Provided, however, That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: Provided, further, That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts are made.

Endorsement of the DOE must be secured before any sale, transfer or disposition of the imported capital equipment, machinery or spare parts is made: Provided, That if such sale, transfer or disposition is made within the ten (10)-year period from the date of importation, any of the following conditions must be present:

- a. If made to another RE developer enjoying tax and duty exemption on imported capital equipment;
- b. If made to a non-RE developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;
- c. Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and
- d. For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties

Special Realty Tax Rates on Equipment and Machinery. – Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a Registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: Provided, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant;

Operating Loss Carry-Over (NOLCO). – The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss: Provided, however, That operating loss resulting from the availment of incentives provided for in this Act shall not be entitled to NOLCO;

Corporate Tax Rate. – After seven (7) years of income tax holiday, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income as defined in the National Internal Revenue Act of 1997, as amended by Republic Act No. 9337. Provided, That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.

Accelerated Depreciation. – If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books and be taxed based on such: Provided, That if it applies for Accelerated Depreciation, the project or its expansions shall no longer be eligible for an ITH. Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE resources may be depreciate using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of Department of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

- i. Declining balance method; and
- ii. Sum-of-the years digit method

Zero Percent Value-Added Tax Rate. – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

Cash Incentive of Renewable Energy Developers for Missionary Electrification. – A renewable energy developer, established after the effectivity of this Act, shall be entitled to a cash generation-based incentive per kilowatt hour rate generated, equivalent to fifty percent (50%) of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification;

Tax Exemption of Carbon Credits. – All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes;

Tax Credit on Domestic Capital Equipment and Services. – A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and customs duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer for purposes set forth in this Act: *Provided, That prior approval by the DOE was obtained by the local manufacturer: Provided, further, That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract.*

Renewable energy (RE) projects

In spite of the good intentions of RA 9513, the law has its critics. For one, critics say that RE ventures need huge capital outlays that only the establishments with huge resources may participate in such endeavour¹⁸. Small and medium enterprises would be left out, partly because of the following constitutional provision:

*“No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted **except to citizens of the Philippines** or to corporations or associations organized under the laws of the Philippines **at least sixty per centum of whose capital is owned by such citizens**, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period*

than fifty years. Neither shall such franchise nor right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate capital, and all executive and managing officers of such corporation or association must be citizens of the Philippines.¹⁹”

As a consequence of the constitutional limitation of capital in the operation of public utilities, only established Filipino corporations have the capacity to satisfy the 60% capital requirement in case of a foreign participation in the RE project. In so doing, RA 9513 would be a convenient vehicle towards the creation of monopolies.

Nevertheless, Congress enacted the following laws aiming to make foreign investments in the Philippines attractive in spite of the equity limitation of the Constitution:

- **RA 7042**, an Act to promote foreign investments, prescribe the procedures for registering enterprises doing Business in the Philippines, and for other purposes, approved by President Fidel Ramos on March 28, 1996, otherwise known as the “Foreign Investments Act of 1991”; and
- **RA 8179**, an Act further liberalizing foreign investments, approved by President Fidel Ramos on March 28, 1996.

The two laws create two lists, the Negative List A and Negative List B. Negative List A enumerates areas of activities reserved to Philippine nationals by mandate of the constitution and specific laws. The second list, the Negative List B, enumerates areas of activities and enterprises regulated pursuant to law. Correlating RA 7042 and RA 8179 with the RE law, RA 9513, the entry of foreign investors seem to be tedious, if not outright difficult.

The Anti-trust bills

The Senate of the Philippines recognizing that the creation of monopolies is detrimental to the economic development, has two (2) anti-trust bills that are currently under consideration. These bills are as follows: (a) SB 1 (filed by Senator Juan Ponce Enrile) – *The Competition Act of 2010*, and (b) SB 123 (filed by Senator Serge Osmena III) – *The Fair Trade Act of 2010*.

¹⁸ Philippine Renewable Energy Act: Dysfunctional and Inefficient Protectionism, <http://antipinoy.com/renewable-energy-act-dysfunctional-and-inefficient-protectionism/>

¹⁹ The Philippine Constitution, Article XII, National Economy and Patrimony, Section 11.

In the case of SB 1, the bill is guided by the following constitutional provision:

“The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed” (Constitution of the Philippines, Article XII, National Economy and Patrimony, Section 19), and

“Acts which circumvent or negate any of the provisions of this article shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law.” Constitution of the Philippines, Article XII, National Economy and Patrimony, Section 22)

It appears that the constitutional limitation on the capital participation of **foreign investors** on certain industries constricts the objectives of SB 1 and SB 123, when huge capitals are involved.

To drive home the point, consider the following RE projects wherein highly capitalized domestic companies have joint projects with equally highly capitalized foreign investors²⁰:

- The **Ayala Corporation**, through its subsidiary, Michigan Power, Inc., acquired Northwind Development Corporation the owner of a wind farm in Bangui, Ilocos Norte. The wind farm will produce 1,000 MW of electricity which will be sold to Ilocos Norte Electric Cooperative. The wind farm is a pioneering industry, the first in Asia;
- **San Miguel Corporation** has an existing RE plant producing 3, 145 MW in its four (4) power plants;
- The **Lopez Group** has 2,832.4 MW RE power plant equivalent to 19% capacity; and
- The **Aboitiz Group** has 2,051 MW in beneficial capacity, equivalent to a national share of 14%.

Depletable and non-renewable sources of energy

As a consequence of the unabated increases in the cost of petroleum products, it is but logical for the Philippines to seek other sources of energy, especially if they are found locally. In this regard,

coal production increases in importance. However, coal mining has its inherent disadvantages like the following:

- a. it is not environment friendly because its use as source of energy results in undesirable carbon emission, aggravating global warming;
- b. it is depletable resource;
- c. it decreases agricultural productive land, posing a threat to food security;
- d. its use as a source of energy is limited; and
- e. the proposal to convert the mothballed facilities of the Bataan Nuclear Power Plant (BNPP), as mentioned earlier requires huge capital outlays.

Nevertheless, the Department of Energy (DOE) is pushing for the construction of mine-mouth power plants in Cotabato. The projects have the potential to support as much as 740 megawatts (MW) of power for the next 25 years. The total minerable reserves at the coal mine site in Lake Sebu alone is places at around 70 million metric tons. The reserves would support the power plant for the next 25 years. In order to preserve the environment of South Cotabato, the proposed mine-mouth power facility would use the fluidized bed technology involving an efficient combustion process that would result in less carbon emission. The grid's power supply had become very unstable due to thin reserves. The involved companies involved are Daguma Agro-Minerals, Inc, Sultan Energy Philippines Corporation and²¹ Bonanza Energy Resources Inc. The objective of the projects mentioned is to produce coal in commercial quantities.

Easter Petroleum Corporation is considering putting up a 300 megawatt (MW) coal-fired power plant in Bataan. The planned clean-coal power plant also aims to augment the current capacity in Luzon, in an effort no only to help prevent a power crisis but also to further spur competition that could, in turn, result in lower rates. The feasibility study would be completed next year (2012) with construction to follow by 2013. The generation facility should be up and running by 2015. Apart from the planned coal-fired power plant, the oil firm is also considering venturing into nuclear power generation, hoping that the government will consider reviving the Bataan Nuclear Power Plant (BNPP).²²

²⁰ Ayala Ventures into Power, Business Section, Philippine Daily Inquirer, March 18, 2011; and Ayala Corp buys into country's wind farm, Business World, March 18-19 (Friday-Saturday).

²¹ Philippine Daily Inquirer, Monday, February 21, 2011.

²² Philippine Daily Inquirer, Monday, February 21, 2011.



Administrative response to the crisis

On March 3, 2011, President Benigno Simeon Aquino Administrative Order No. 6 in order to create an inter-agency emergency committee to enhance existing contingency plans for ensuring an adequate fuel supply amid the escalating tensions in the Middle East and North Africa. To the *chagrin* of the administration, the consumer price index in February 2011 rose causing the annual inflation rate to climb to 4.3%, the highest since May 2010.

The members of the committee are the Secretaries of Finance, Budget and Management, Justice, Trade and Industry, Agriculture, National Defense, Interior and Local Government, and Transportation. The move of the President only highlights the possible adverse impact of the future lack of petroleum supply which would possibly escalate in domestic fuel rationing. As a matter of policy by the DOE, the full rationing program would be triggered only when local industry levels fall dangerously to only 10% of the current requirements.

On March 3, 2011, Energy Secretary Jose Rene Almendras said that the domestic oil companies have inventories good for **24 days** crude oil stocks. In this regard it is assuring for the consuming public that Pilipinas Shell Petroleum Corporation maintains an inventory good for 60 days. The small players have a supply lasting for **25 days**. The Philippines have an average of **45 days** inventory level across petroleum products.

The Department of Energy issued Circular

2011-03-0002, regulating the inventory of oil products. The Circular requires oil firms to maintain a minimum inventory equivalent to the following: (a) **15 days** supply of petroleum products, (b) **7 days** for liquid petroleum gas (LPG), and (c) **30 days** for crude oil and refined petroleum products. Such requirement was originally imposed by the DOE in 2003 the height of the US invasion of Iraq.

Oil sharing agreements²³

The LPGMA (party list) Representative Arnel Ty proposes the following²⁴:

- a. There should be an emergency oil sharing agreements with one or two friendly countries having large stockpiles like the United States and Japan.
- b. The Philippines can enter into a "*formal commercial storage agreement*" with oil exporting countries, and eventually build a state-owned Strategic Petroleum Reserve (SPR), possibly through the National Oil Co., for use during extreme emergencies.

A few years back, in 2007, the Japanese government announced a program to share its emergency oil stockpile with the countries in the Asia-Pacific in case of oil crisis. In this regard, South Korea and New Zealand availed of such an agreement with Japan. Japan has a Strategic Petroleum Reserve (SPR) of 583 million barrels as emergency reserve.

Unfortunately, the recent earthquake, tsunami, and the subsequent mothballing of the Daiichi Fukushima nuclear power plants in March 2011 seems that any oil sharing agreement with Japan would not be possible.

Had the Japanese misfortunes did not occur, the Japanese government would be more than willing to have an agreement with the Philippines, considering that there are several Japanese manufacturing firms in the Philippines, whose operations may be hampered in case of oil crisis. Furthermore, Japan is our second largest trading partner after the United States.

The idea of having a forward storage agreement with the oil exporting countries is also proposed. A forward commercial deal allows petroleum to be stored in an oil-importing country, such as the Philippines. Such reserves are technically being owned by the oil-exporting country.

²³ Fuel-sharing deal with Japan proposed, Paolo Romero, The Philippine Star, March 7, 2011.

²⁴ Newspaper press releases, March 7, 2011.

Presidential emergency power²⁵

Congressman Teodorico Haresco, representing the party list, *Kasangga sa Kaunlaran*, proposes the following:

- a. Government owned and controlled corporations (GOCC's) like the Social Security System (SSS) and the Government Service Insurance System (GSIS) should invest in **oil futures market²⁶** including corn and soy stocks at the Chicago futures market;
- b. In order to assure food security, the Philippines may barter goods for phosphate and fertilizers by the Department of Trade and Industry – Philippine International Trade Center (DTI-PITC) in the midst of the oil crisis; and
- c. In order to stabilize oil prices, there should a grant of emergency power to the President. Such presidential emergency power should include the inventory by the Department of Energy (DOE) of the oil supply in the Philippines in order to avoid artificial shortages of the products. The proposal will empower the President audit the financial books of the domestic oil companies.

The Philippine Constitution provides for the following:

“Sec. 23. (1) The Congress, by the vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of war.

(2) In times of war, or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

Limiting the discussion on the case at hand (oil crisis), the grant of an emergency power to the President must satisfy the following requirements:

- a. There must be an emergency;

- b. The grant of the power must be for a limited period only;
- c. The grant shall be subject to limitations set by Congress; and
- d. The grant must be exercised to carry out a national policy in times of emergency.

But what seems to be the problem with the oil companies needing the grant of emergency power to the President? It is the inventory and pricing system they use.

There are three inventory system methods being used:

- a. The *“first-in-first-out”* (FIFO) method. The oldest inventory will be the first to be sold. The price of the oldest inventory is used as the selling price;
- b. The *“averaging”* method. The acquisition cost of all the inventories on hand are averaged in proportion to the quantity; and
- c. The *“last-in-first-out”* LIFO method. The newest acquired inventory will be sold, likewise its price of the last acquired inventory will be used as the selling price.

The domestic oil companies raise the pump prices of their products once or twice **within a week**. It appears that these companies rely more of the daily fluctuations petroleum products in the international market rather than in their inventory system. If the public perception is true these companies are not using the commonly accepted inventory methods. The government should come in and audit such companies to determine their accurate income.

In this regard, the grant of emergency power to the President is necessary considering the following reasons: (a) to bring down the pump prices of petroleum products, and (b) the possible enactment of a *“windfall tax”* in order to increase the coffers of the government. Constitutionally speaking, the grant of emergency power to the President has its pitfalls.

Taming the grant of emergency power to the President

At this juncture, it worthwhile to consider an Ateneo Law School paper²⁷ regarding the grant of emergency power to the President. The paper

²⁵ Opinion of Congressman Teodorico Haresco in a radio interview dated March 3, 2011.

²⁶ **Futures market** is an auction market in which participants buy and sell commodity/future contracts for delivery on a specified future date. Trading is carried on through open yelling and hand signals in a trading pit. Volume in the **futures market** usually increases when the stock market outlook is uncertain. (www.investopedia.com>dictionary)

²⁷ **Extraordinary Measures: Constitutional Powers in Times of Crisis**, Antonio G>M> La Vina, Anna Liza Su, and Edgar Bonto, Institutional Reform Paper Series, Ateneo School of Government with Support of Konrad-Adenauer-Stiftung.

stresses that the grant of such emergency power should be resorted **only as the last resort**. If the existing laws are sufficient, then there is no need to give the President emergency power. Emergency power mean the destruction of the checks and balances enshrined in the Constitution due to the weakening of the independence of the three branches of government – the Executive, the Legislative, and the Judiciary. During an emergency, the people cannot hold the government to the strict constitutional constraints that otherwise bind it.

The 1987 Constitution contains the following safeguards in the grant of emergency powers to the President:

- a. No congressional concurrence is required, but Congress has the power of revocation through majority vote of all members of Congress, voting jointly, and such revocation cannot be set aside by the President;
- b. The grant is subject to judicial review; the decision must be promulgated within 30 days from filing;
- c. If Congress is in session, the President is required to submit a report to Congress in person or in writing within 48 hours from the declaration; and
- d. If Congress is not in session, all members are required to convene without the need of call within 24 hours from the declaration.

The report further enumerates in a more detailed way, the guidelines, in case the Legislature would grant emergency power to the President to answer the unabated rise in the cost of imported petroleum products:

- 1. No general regime or particular institution of constitutional dictatorship (*grant of emergency power to the President*) should be initiated unless it is necessary or even indispensable to the preservation of the state and its constitutional order;
- 2. The decision to institute a constitutional dictatorship should never be in the hands of the man or men who will constitute the dictator;
- 3. No government should initiate a constitu-

tional dictatorship without making a specific provision for its termination;

- 4. All uses of emergency powers and all readjustments in the organization of the government should be effected in pursuit of constitutional or legal requirements;
- 5. No dictatorial institution should be adopted, no right invaded, no regular procedure altered any more than is absolutely necessary for the conquest of the particular crisis;
- 6. The measures adopted in the prosecution of a constitutional dictatorship should never be permanent in character or effect;
- 7. The dictatorship should be carried on by persons representative of every part of the citizenry interested in the defence of the existing constitutional order;
- 8. Ultimate responsibility should be maintained for every action taken under a constitutional dictatorship;
- 9. The decision to terminate a constitutional dictatorship, like the decision to institute one, should never be in the hands of the man or men who constitute the dictator; and
- 10. No constitutional dictatorship should extend beyond the termination of the crisis for which it is instituted.

Among the most talked-about suggested solutions regarding the escalating prices of imported petroleum products is the non-imposition of the VAT. As expected, the President of the Philippines rejects the idea because of the budget deficit situation of the current administration. Although the proposal appear to be moot and academic, it is still worthwhile to calculate the government revenue impact of such a proposal.

The Tariff Commission furnished the STSRO of the following revenue foregone if the VAT is

Estimated Revenue Foregone on Petroleum Products Imports				
AHTN ²⁸	Estimated Revenue foregone (P)			
	If VAT will not be collected	If rate of duty Will be reduced		
		From 3% to 1%	From 3% to 0%	From 1% to 0%
27.09 & 27.10	35,433,263,601	224,755,740	337,133,610	1,407,818

²⁸ The Tariff and Customs Code of the Philippines.

not collected on **importation** of petroleum products:

The particular products affected by the estimate are the following:

- AHTN (ASEAN Harmonized Tariff Nomenclature) 27.09 – Petroleum oils and oils obtained from bituminous minerals, cure, and
- AHTN 27.10 – Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than waste oils.

P46.35 against US\$1. On the other hand, VAT collection went up in 2008 by 73%. The increase can be credited to the increase in oil prices from US\$69.08 to US\$94.45 and the weakening of the peso from P41.40 to P47.48 against US\$1.

It is to be noted that BOC's VAT collection from petroleum oils and oils obtained from bituminous minerals crude, petroleum oils, etc. (excluding crude); preparations thereof, petroleum gases and other gaseous hydrocarbons amounted to P13.75 billion.

The NTRC has the following comments on the amount of Government Revenue to be foregone if the tariff rates are decreased/eliminated³⁰:

The downstream oil deregulation law also set a new tariff rate for imported crude oil and imported refined petroleum products at a uniform rate of three percent (3%). However, as part of the country's commitment to international trade agreements, the country has recently eliminated tariff duties on the remaining products in the inclusion list in 2010 under the Common Effective

BUDGET OF EXPENDITURES AND SOURCES OF FINANCING, 2006 – 2010 (IN MILLION PESOS)						
	2006	2007	2008	2009	2010	Average
BOC VAT Revenue on Petroleum Products	15,295.00	16,193.00	28,082.00	13,356.00	15,903.00	17,765.80
Growth Rate		6%	73%	-52%	19%	11%

The NTRC²⁹ gives the estimates as well as the analysis in case the VAT and/or the tariff is eliminated or decreased.

For the period 2006 to 2010, the average VAT revenue from petroleum products collected by the Bureau of Customs (BOC) amounted to P17.7 billion. The highest collection was in 2008 with P28.08 billion while the lowest was in 2009 with P13.36 billion. The sudden downfall in VAT collection from petroleum products by 59% between 2008 and 2009 can be attributed to the decline in oil prices from US\$94.45 to US\$61.06 and the appreciation of the peso from P47.48 to

Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA)/ASEAN Trade in Goods Agreement (ATIGA) which includes imported crude oil and petroleum products via Execu-

tive Order (EO) No. 850³¹ (December 23, 2009). Hence, effective January 1, 2010, imported crude oil and other petroleum products are accorded a 0% duty.

In the same manner, as provided under the Tariff and Customs Code of the Philippines (TCCP), the President may exercise his powers to reduce such tariff rates when, in his judgment, such reduction is warranted. In this case, EO No. 890³² (June 10, 2010) was issued imposing a zero percent (0%) MFN rate of duty on petroleum oils and oils obtained from bituminous minerals, crude (AHTN Heading No. 27.09) and on petroleum oils and oils obtained from

²⁹ Letter-response of the National Tax Research Center (NTRC) sent to the STSRO dated March 14, 2011, signed by its Executive Director Dante Sy.

³⁰ Inputs from the Special Research and Technical Services Branch of the National Tax Research Center, March 11, 2011.

³¹ Entitled "Modifying the Rates of Duty on Certain Imported Articles As Provided For Under the Tariff and Customs Code of 1978, As Amended, In Order to Implement the Commitment to Eliminate the Tariff Rates on the Remaining Products in the Inclusion List in Year 2010 Under the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA)/ASEAN Trade in Goods Agreement (ATIGA)"

³² Entitled, "Modifying the Nomenclature and the Rates of Import Duty on Crude Oil, Petroleum Products and Asphalt Under Section 104 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464), As Amended"

Volume and Value of Importations and Duties and Taxes Collected CYs 2007-2009			
Hdg. No.	Volume	Value (Php)	Duties and Taxes (Php)
2009			
2709 ³⁵	1,583,459	35,639,644,073.52	5,659,574,990
2710 ³⁶	2,358,129,373.50	104,809,529,286.68	28,050,660,204
Total		140,503,173,360.20	33,710,235,194
Hdg. No.	Volume	Value (Php)	Duties and Taxes (Php)
2008			
2709	4,445,043,294	289,484,172,792.56	38,091,403,585
2710	3,757,604,526.79	254,125,277,329.81	45,094,247,505
Total		543,609,450,122.37	83,185,651,090
Hdg. No.	Volume	Value (Php)	Duties and Taxes (Php)
2007			
2709	5,527,884,855	284,455,112,711	40,010,267,710
2710	2,882,807,684	179,106,346,027.08	36,489,990,465
Total		427,561,458,738.08	76,500,258,175
Sources of Data: Bureau of Customs (BOC)			

bituminous minerals, other than crude; x x x (AHTN Heading No. 27.10) 'to address the tariff distortion brought about by the implementation of the zero duty under EO No. 850³³, as well as 'provide a level playing field for local refiners to compete with importers, ensuring their existence to produce environmentally-compliant refined fuels and provide security of fuel supply³⁴.

Given the existing rates of duty for imported crude oil and other petroleum products, **the idea being considered to reduce or eliminate tariff duties on the said commodities is no longer necessary as the existing rates on said commodities are already pegged at 0%.**

Prior to the said impositions, however, data gathered from the BOC show the following total volume and value of imported petroleum products as well as the total duties and taxes collected for CYs 2007-2009.

Based on the foregoing table, a 3% duty on the total value (P140.50 billion) of imported petroleum

products for CY 2009 would yield an estimated total revenue from duties around P4.215 billion. The said estimated amount may also be considered as the revenue foregone from duties by the government upon the effectivity of EO Nos. 850 and 890 in CY 2010, assuming that the same total volume and value of petroleum products were imported into the country in the said year.

The lowering of the tariff rates on petroleum products to a certain extent alleviated the burden of the consuming public as the prices of oil were slightly trimmed down. Furthermore, the said reduction in tariff rate was also envisioned to redound to the benefit of the manufacturing and the power sectors being major users of petroleum oils in terms of reduced operational costs which hopefully was expected to trickle down to the consuming public in terms of lower power cost and finished products. As presently obtaining however, even at the prevailing 0% rate on imported petroleum products, oil prices continuously fluctuate. **This only shows that the rate of duty is not the main consideration in the pricing of petroleum products.**

³³ Whereas Clause of Executive Order No. 890 (June 10, 2010)

³⁴ *Ibid.*

³⁵ Petroleum oils and oils obtained from bituminous minerals, crude

³⁶ Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals; these oils being the basic constituents of the preparations; waste oils



Policy direction

From the point of view of the lawmakers, the following suggested policy directions are helpful:

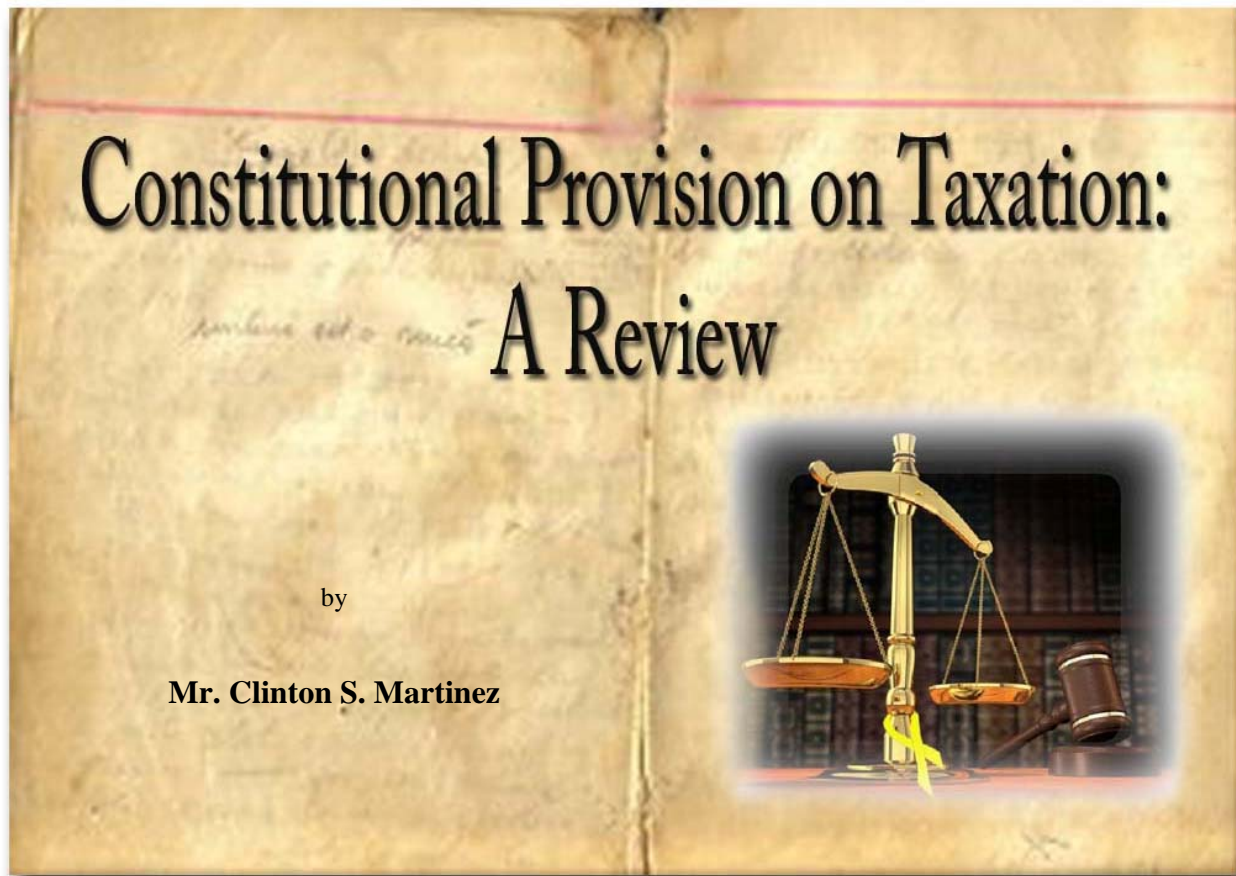
1. **Budget consideration** – The grant of fiscal incentives should be availed of sparingly, because it erodes government revenues. Consider a portion of the DOF report – *“This year’s (2011) revenue and expenditure targets would see the programmed budget deficit amount to P300 billion, higher than the original figure of P290 billion³⁷.”*
2. **Development of domestic small and medium size industries** - The development of the SMEs (small and medium size enterprises) is a way to diffuse the benefits of the grant of fiscal incentives to the “grassroots”. In this regard, it is beneficial for the ordinary investors if the creation of monopolies is curtailed.
3. **Attracting foreign investors** – RA 9513, the *Renewable Energy(RE) Act of 2008*, aims to attract investors in RE projects. However, such projects require huge investments. It is convenient if foreign capital be attracted to RE ventures, but the constitutional provision (Article XII, National economy and Patrimony, Section 11) limits foreign ownership on certain commercial ventures. There are two (2) solutions, firstly, domestic enterprises must tie-up with foreign capital to have the required capital, and lastly, to amend the Constitution.
4. **Grant of emergency power to the President** – The idea of granting emergency power to the President should be availed of as a last resort

because inherently it tends to create an ambiance of dictatorship. It erodes the constitutional “checks and balances.”

5. **Prohibition of the nuclear power as a source of energy** - The Philippines, like Japan, is situated in a region frequently visited by earthquakes. For the sake of safety, the option to establish another nuclear marketing rule of “demand-and-supply.” Therefore, OPSF should be re-established.
6. **The continuing imposition of the VAT on imported petroleum products** – It is not recommended that the VAT on imported petroleum products be lifted due to its adverse impact on the budget of the government.
7. **The imposition of tariff on imported petroleum products** – As a matter of policy, the legislature should not alter tariff rates considering the following reasons:
 - a. Tariff alteration is not purely a matter of domestic law. The Philippines is a signatory to different trade agreements affecting tariffs. International trade agreements are part of the Philippines system of laws and must be respected;
 - b. The Tariff Commission can respond immediately to domestic and international markets. Congress needs more time to legislate any tariff change; and
 - c. The prevailing tariff rates are sufficiently low. The Bureau of Customs needs minimal tariff in order to cover the administrative expenses of importing petroleum products.



³⁷ Diane Claire J. Jiao, *Gov’t sets fiscal targets, sees P300-B deficit for 2011*, BusinessWorld, March 18-19, 2011.



Introduction

A lot has been said of the purpose of the inherent power of the sovereign state to impose taxes. Most famous of which is the truism that taxes are the lifeblood of the economy or government, for indeed the constituted authorities cannot perform their mandate without the necessary concomitant resources. However, the prerogative of the state to impose taxes is not without limitations. Said safeguards were enshrined under the 1987 Constitution for the purpose of preventing abuse and whimsical exercise of the power of taxation. As opined by one author¹:

“Although the power of the state to tax precedes constitutions, the 1987 Philippine Constitution nonetheless is replete with tax-related provisions aimed at limiting or regulating the awesome state power to impose this pecuniary burden”

Constitutional provisions on taxation

Under the 1987 Constitution², the following provisions are worth mentioning:

“Sec. 24. All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representative, but the Senate may propose or concur with amendments.

“Sec. 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

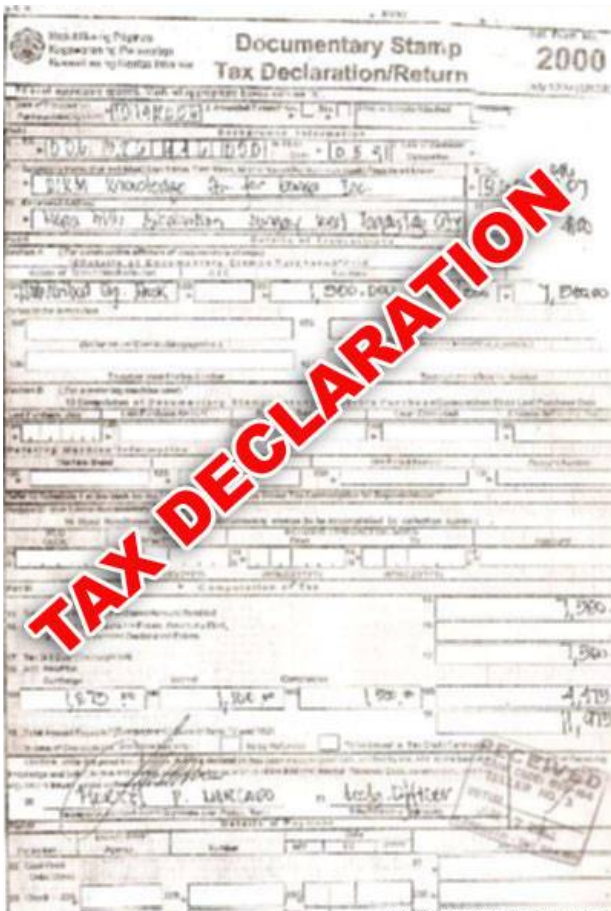
“(2) The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

¹ Dascal, Rodelio T.: NIRC of the Philippines Simplified Version, p. 1., 2008 Revised Edition

² Article VI, The Legislative Department.

“(3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

“(4) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.



“Sec. 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

“(2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination,

sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

“(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general fund of the Government.”

The Bill of Rights³ likewise contains provisions regarding non-impairment of contracts; prohibition from imprisonment in case of non-payment of debt or poll tax; non-establishment of religion; and due process and equal protection. The specific provisions are as follows:

“Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

“Sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

“Sec. 10. No law impairing the obligation of contracts shall be passed.

“Sec. 20. No person shall be imprisoned for debt or non-payment of a poll tax⁴.”

Taxation, defined

Taxation is the inherent power of the government to raise revenue from qualified taxpayers for the purpose of shouldering the sovereign’s expenditures in providing basic services for the populace. *“Taxation is merely a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens. It includes, in its broadest and most general sense, every charge or burden imposed by the sovereign power upon persons, property, or*

³ Article III.

⁴ “Thus, in man’s march toward greater freedom, he has cast off some of the baggage which made his journey more difficult and burdensome. In accordance with the greater concern for the value and importance of man, this guarantee against imprisonment for debt elevates him from the status of a mere chattel to what he should really be in a society that values human rights and dignity.” (Gorospe, Rene B.: Constitutional Law, Vol. 2, p. 718)

property rights for the use and support of the government and to enable it to discharge its appropriate functions, and in that broad definition there is included a proportionate levy upon person or property and all the various other methods and devices by which revenue is exacted from persons and property for public purpose” (Umali, Roman M.: Reviewer in Taxation, p. 1, citing 51 Am. Jur. 34-35).



Role of BIR

Under our jurisdiction, the Bureau of Internal Revenue (BIR) is primarily charged with the implementation⁵ of the provisions of the National Internal Revenue Code (NIRC), as amended. This can be gleaned from the following stipulations:

“SEC. 2. Powers and Duties of the Bureau of Internal Revenue. - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.”

The BIR shall be headed by and subject to the supervision and control of the Commissioner who

shall have the following functions⁶:

- “(1) Assess and collect all taxes, fees and charges and account for all revenues collected;
- “(2) Exercise duly delegated police powers for the proper performance of its functions and duties;
- “(3) Prevent and prosecute tax evasions and all other economic activities;
- “(4) Exercise supervision and control over its constituent and subordinate units; and
- “(5) Perform such other functions as may be provided by law.”

Basic Principles of a Sound Tax System.

In the enactment of tax laws, there are yardsticks that must be observed. As forwarded⁷, the following are the basic principles of a sound tax system:

“*Fiscal adequacy* means that the sources of revenue, taken as a whole, should be sufficient to meet the expanding expenditures of the government regardless of business conditions, export taxes, trade balances, and problems of economic adjustment. It means that the revenues should be capable of expanding or contracting annually in response to variations of public expenditures. The alternatives are to incur the risk of a series of deficits or surpluses due to inelastic revenues or to adjust the amount of public expenditures and services to fit the flow of funds, probably by curtailing expenditures for defense, education, or other activities so that the budget may be balanced and the public credit maintained.

“*Equality or theoretical justice* means that taxes levied must be based upon the ability of the citizens to pay. Justice and equality are vague terms. They are, moreover, relative to popular concepts of justice which prevail at any time and place. But justice means at least that a tax system should appeal to the average person as fair, and that it should represent public opinion at the time as to what is fair. Justice, moreover, always

⁵ The phases of taxation are: (1) Levy; (2) Assessment and Collection; and, (3) Payment.

⁶ Administrative Code of 1987 (EO 292), July 25, 1987; Book IV, Title II, Chapter 4, Sec. 18. For more details, please refer to Title I of the NIRC, as amended.

⁷ Umali, supra, p.5.

refers primarily to the tax system as a whole rather than to any particular tax.

“Administrative feasibility means that in a successful tax system, each tax should be clear and plain to the taxpayers, capable of enforcement by an adequate and well-trained staff of public officials, convenient as to time and manner of payment, and not unduly burdensome upon or discouraging to business activity.”

In other words, the fiscal position of the government must be flexible and ready to meet possible exigencies taking into consideration not only internal conditions but also macro economic situations. Of course, the taxes should be commensurate to the paying capacity of the taxpayers and that the cost of collecting the same should not be more than the impost or tax to be collected.

Limitations on the Power of Taxation

As earlier espoused, the power of taxation is not without limitations. There are two (2) kinds of limitations: (1) inherent and (2) constitutional. “The inherent limitations are: (a) a tax may be levied only for public purposes; (b) the power to tax is limited to the territorial jurisdiction of the sovereign state; (c) the power to tax, inherently legislative, may not be delegated; and, (d) international comity.” (Umali, *Ibid*, p. 21)

Public Purpose. - “The proceeds of the tax must be used (a) for the support of the State or (b) for some recognized objects of government or directly to promote the welfare of the community.” (Vitug and Acosta: *Tax Law and Jurisprudence*, 3rd Ed., p. 5) Tax enactments carry with them the purpose for which they are imposed and generally taxes should be expended only for that particular objective.

As stated “The use of tax proceeds for putting up experimental facilities to increase sugar production and benefit that industry⁸; for granting assistance to the Boy and Girl Scouts⁹; for the support of a public educational system¹⁰; and other special public purposes, without any part of such money being channeled directly to private interest, cannot seriously be assailed.¹¹” Likewise, it has

been forwarded that “X x x, the true test of what is a public use for purposes of taxation is that which requires that the work shall be essentially public and for the general good of all the inhabitants of the taxing body.¹²”

Territorial Jurisdiction. - “This simply means that the power to tax is limited to the territorial jurisdiction of the sovereign state.¹³” In this connection, it is important to take note of the concept of situs of taxation. “It means the place of taxation; the state which has jurisdiction to impose a particular tax upon persons, property or transactions.¹⁴” In determining the tax situs, the following are observed: (a) Poll Tax – residence; (b) Property Tax – where property is situated; and, (c) Excise Tax - last residence of taxpayer or where the profession/ privilege is exercised or where the taxpayer is a national of.¹⁵

Legislative in Character. - As earlier mentioned, the 1987 Constitution enshrines the power of taxation upon the legislature¹⁶ under Section 24 of Article II. It was opined that:

“Taxation is an inherent attribute of sovereignty. It is a power that is purely legislative and which the central legislative body cannot delegate either to the executive or judicial department of government without infringing upon the theory of separation of powers. The rationale of this doctrine may be traced from the democratic principles of ‘no taxation without representation.’ The power of taxation being so pervasive, it is in the best interest of the people that such power be lodged only in the Legislature. Composed of the people’s representatives, it is ‘closer to the pulse of the people and . . . are therefore in a better position to determine both the extent of the legal burden the people are capable of bearing and the benefits they need.” (Recalde, Eric R.: *A Treatise on Tax Principles and Remedies*, p. 37)

International Commitments. - “The binding effect of this principle has been recognized and has found its way in our Constitution which provides that the generally accepted principles of international law shall be part of the law of the nation.¹⁷” The 1987 Philippine Constitution provides:

⁸ Lutz vs. Araneta, 98 Phil. 148.

⁹ City of Baguio vs. De la Rosa, 97 Phil. 994.

¹⁰ Gomez vs. Palomar, 25 SCRA 827

¹¹ *Ibid*, pp 5-6.

¹² Umali, p. 22, citing 51 Am. Jur. 378-379.

¹³ *Ibid*, p. 25, citing 51 Am. Jur. 88.

¹⁴ *Ibid*, p. 25.

¹⁵ Please refer to Vitug and Acosta: *Tax Law and Jurisprudence*, p. 10.

¹⁶ The exceptions are : (1) Delegation to administrative bodies; (2) Delegation to local government units or political subdivisions; and, (3) Delegation as provided in the Constitution itself [Art. VI, Sec. 28(2)].

¹⁷ Umali, p. 33.

"The Philippines renounces war as an instrument of national policy, *adopts the generally accepted principles of international law as part of the law of the land* and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations." (Article II, Section 2. Emphasis supplied)

Agreements entered into by the government with international institutions form part of the law of the Philippines. Of course, reciprocity must be existent. Tax treaties are entered into by the country to avoid double taxation and to protect their citizens from perceived harassment on the part of another jurisdiction¹⁸.



Other Constitutional Provisions on Taxation

There are other constitutional provisions that directly affect the seemingly unlimited power of taxation. These are:

"No law granting any tax exemption shall be passed without the concurrence of a majority of all the members of the Congress." (Art. VI, Sec. 28[4]);

"No person shall be imprisoned for debt or non-payment of a poll tax." (Art. III, Sec. 20);

"The rule of taxation shall be uniform¹⁹ and equitable. The Congress shall evolve a progressive system of taxation." (Art. IV, Sec. 28[1]);

"The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government." (Art. VI, Sec. 28[2]);

"Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively²⁰ used for religious, charitable, or educational purposes shall be exempt from taxation." (Art. VI, Sec. 28[3]);

"All revenues and assets of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law."

"Proprietary educational institutions, including those cooperatively-owned, may likewise be entitled to such exemptions subject to the limitations provided by law including restrictions on dividends and provisions for reinvestment." (Art. XIV, Sec. 4[3]);

"The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items which he does not object." (Art. VI, Sec. 27[2]);

"All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government." (Art. VI, Sec. 19[3]);

¹⁸ "The Philippine Constitution, indeed, has expressly adopted the generally accepted principles of international law as part of the law of the land. Under international comity, a state must recognize the generally accepted tenets of international law, among which are the principles of sovereign equality among states and of their freedom from suit without their consent, that limit the authority of a government to effectively impose taxes on a sovereign state and its instrumentalities, as well as on its property held, and activities undertaken, in that capacity. Even when one enters the territory of another, there is an implied understanding that the former does not thereby submit itself to the authority and jurisdiction of the latter." (Vitug and Acosta, p. 11)

¹⁹ "A tax is considered uniform when it operates with the same force and effect in every place where the subject may be found." (Comm. vs. Lingayen Gulf, 164 SCRA 27)

²⁰ Exclusively means primarily. See *Herrera vs. Quezon City Board of Assessment Appeals*, 3 SCRA 186.

"Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the local governments." (Art. X [5]);

"Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them." (Art. X[6]); and

"The Supreme Court shall have the power to review, revise, reverse, modify or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in X X X (b) All cases involving the legality of any tax, impost, assessment, or toll or any penalty in relation thereto." (Art. VIII, Sec. 5[b]).

Conclusion

In the enactment of tax laws, legislators are guided or limited by the provisions found in the 1987 Constitution. Said enumeration delimit the power of the legislature. They serve as checks on the exercise of the almost plenary power of Congress to pass laws that affect the property rights of the citizens. Supreme Court rulings and interpretations of laws, including those involving

taxation, are always relied upon in order to craft statutes that could stand the scrutiny involving its possible unconstitutionality. Although the imposition of taxes are frowned upon by the people, they are nevertheless constrained to part ways with a certain portion of their wealth in order to support the government. Taxation is a mode of distributing scarce resources that are in the hands of the few to benefit most of the population. It will be observed that upon the death²¹ of the individual, his estate pays a corresponding tax depending upon the net value of the same (Sec. 84, NIRC) and "No judge shall authorize the executor or judicial administrator to deliver a distributive share to any party interested in the estate unless a certification from the Commissioner that the estate tax has been paid is shown."²² Said NIRC provision shows the primacy of taxes over certain claims. It also manifests the importance of paying taxes even after death. Also, this is another method of wealth distribution and allocation, limiting its confluence in the hands of the few.

As a final note, it should again be emphasized that the limitations imposed upon the power to tax guards against confiscatory legislations. However, as mentioned earlier, those required to make their contribution for government maintenance must perform the same diligently lest they be charged with tax evasion. The government will not be hesitant to run after tax evaders. However, the basic rights of taxpayers must be respected at all times knowing how encompassing the power of taxation is.

²¹ The estate tax is an excise tax on the right of transmitting property at the time of death and on the privilege that a person is given in controlling to a certain extent the disposition of his property to take effect upon death (Vitug and Acosta: Tax Law and Jurisprudence, p. 211).

²² Sec. 94, NIRC.



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